IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 699 of 2001

(Old No. 1766 of 1996)

Rishipal, S/o Bal Ram,
R/o Village Daluwala,
P.S. Ranipur, District Haridwar.

…….. Appellant.

Versus

State

……Respondent.

Sri Raman Kumar Sah, learned Amicus Curiae for the appellant.
Sri Amit Bhatt, learned G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Prafulla C. Pant, J.(Oral)]

This is an appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 11.9.1996 passed by learned IInd Additional Sessions Judge, Haridwar, in Sessions Trial No. 354 of 1994, whereby

appellant has been convicted under Section 302 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.) and sentenced to rigorous imprisonment for life.

(2) Heard learned counsel for the parties and perused the evidence on record.

(3) The prosecution story in brief is that deceased Nathi Ram, informant Dalmeer (P.W. 1) and accused appellant Rishipal were related to each other. Deceased was brother-in-law of the informant and accused appellant Rishipal was son of brother-in-law (SADHU) of brother of the informant. Prosecution case is that a sum of Rs. 10,000/- was taken by accused Rishipal as a loan from deceased Nathi Ram, regarding which the latter used to make demand for repayment. On 3.5.1994, deceased had gone to village of Rishipal in connection with repayment of the loan at about 8.00 P.M. and when he did not return, P.W. 1 Dalmeer along with C.W. 1 Naresh and C.W. 2 Brij Pal, in search of Nathi Ram (deceased) proceeded to the village of accused Rishipal. On the way near a dry river, they saw in the light of torch that Nathi Ram is lying by his abdomen on the sand and accused Rishipal was on the back of his neck giving blows with the fist on his head. By this, the accused was causing mouth of the deceased embedded in the sand. When the witnesses reached there, accused Rishipal ran way from said place. Nathi Ram meanwhile had died. P.W. 1 Dalmer got lodged First Information Report (Ext. A-1) next day on 4.5.1994

at about 6.15 A.M. with police station Ranipur (Haridwar), where Crime No. 66 of 1994 was registered against accused Rishipal relating to offence punishable under Section 302 of I.P.C.. A check report (Ext. A-4) was prepared by the Police and necessary entry was made in the general diary in this connection. Sub Inspector Santosh Kumar Jaiswal (P.W. 5), Station Officer took up the investigation. He interrogated the witnesses and went to the spot. Investigating Officer prepared site plan (Ext. A-7). He took the dead body of Nathi Ram in his possession and prepared inquest report (Ext. A-8). He also prepared sketch of the dead body, Police Form No. 13, Police Form No. 33, sample seal, letter to the Chief Medical Officer and other connected papers (Ext. A-10-Ext. A-14). Also near the place of incident the underwear, trouser, shirt, belt and chappals of the deceased were also taken into possession and a memorandum (Ext. A-9) was prepared by the Investigating Officer. However, on 7.5.1994 due to the transfer to Santosh Kumar Jaiswal, further investigation was handed over to Sub Inspector D.K. Saini (P.W. 4). He also inspected the spot. The subsequent Investigating Officer took torch, in the light of which the witnesses had seen the incident, in his possession and prepared memorandum (Ext. A-2). Accused Rishipal surrendered before the Court on 20.5.1994. Meanwhile, the dead body of the deceased was sent for post mortem examination. P.W. 2 Dr. T.S. Parmar conducted the autopsy on the dead body on 5.5.1994 and prepared post mortem examination report (Ext. A-3). In the opinion of the Medical Officer, deceased died due to asphyxia as a result of

suffocation and strangulation. On completion of the investigation, P.W. 4 D.K. Saini submitted charge sheet (Ext. A-6) against the accused Rishipal for trial in connection with the offences allegedly committed by him.

(4) The Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused as required under Section 207 of Cr.P.C., appears to have committed the case to the Court of Sessions for trial. The learned IInd Additional Sessions Judge, to whom the case was transferred for trial, on 19.2.1996 after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of I.P.C. against accused Rishipal. The accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dalmeer, informant and eye witness, P.W. 2 Dr. T.S. Parmar, who conducted the autopsy on the dead body of the deceased, P.W. 3 Head Constable Ram Kishan Singh, who prepared the check report of the First Information Report, P.W. 4 Sub Inspector D.K. Saini, who competed the investigation and P.W. 5 Sub Inspector Santosh Kumar Jaiswal, who started the investigation. Apart from this two more witnesses namely C.W. 1 Naresh and C.W. 2 Brij Pal were examined. The oral and documentary evidence was put to the accused under Section 313 of Cr.P.C., in reply to which he alleged the same to be false. In defence D.W. 1 Sri Mohan Lal Sachdeva, Advocate was got examined.

(5) After hearing the parties, the trial court found accused Rishipal guilty of offence punishable under Section 302 of

I.P.C. and after hearing on sentence, sentenced him to rigorous imprisonment for life. Aggrieved by said judgment and order dated 11.9.1996, the appellant preferred this appeal before the Allahabad High Court, from where it has been received by transfer under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

(6) Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of the deceased. Statement of P.W. 2 Dr. T.S. Parmar read with post mortem examination report (Ext. A-3) discloses following ante mortem injuries on the person of the deceased Nathi Ram.

(i) Abraded contusion 6cm x 4 cm on face on left side,

(ii) Contusion 10 cm x 2cm on front and left side neck,

(iii) Contusion 14cm x 6cm on the front and upper part of chest,

(iv) Multiple abrasion in an area of 28cm x 10cm on chest and abdomen.

During external examination, it is also observed by Dr. T.S. Parmar in the report that face was found smeared with sand particles. Mouth was open and sand was also present inside the mouth. On internal examination, it was found by the Medical Officer that the lungs were congested and bloody froth oozing out on cutting in larynx. The treachea was found deeply congested. In the abdomen and oesophegus

sand particles were found. The Medical Officer opined that the deceased had died due to asphyxia as a result of suffocation and strangulation.

(7) P.W. 1 Dalmeer has stated on oath that the deceased Nathi Ram was his brother-in-law and accused Rishipal, who was also their relation had taken a loan of Rs. 10,000/- from the deceased. He further states that several times deceased requested for repayment of loan, but Rishipal avoided the same. According to this witness (P.W. 1) on 3.5.1994, when Rishipal had gone for realization of loan amount to village Daluwala to which Rishipal belonged, there, deceased was administered the excessive liquor. When Nathi Ram did not return back, according to this witness Dalmeer, he along with Naresh and Brij Lal went to village Daluwala. On the way at about 8.00-8.30 P.M. near a dry river, the heard cries, and in the light of torch they saw that accused Rishipal is riding on the back of the neck of deceased whose face was imbedded in the sand. On seeing, that the witnesses were approaching him, Rishipal ran away leaving Nathi Ram there. By that time Nathi Ram had died. P.W. 1 Dalmeer further states that he lodged the First Information Report (Ext. A-1) of the incident in next day morning at the Police Station. This witness further states that he handed over the torch to the Investigating Officer on 24.8.1994.

(8) The above statement of this witness is fully corroborated from the post mortem examination report, which suggests that there were sand particles inside the

mouth and abdomen and also in the larynx of the deceased. Not only this the statement of informant P.W. 1 Dalmeer gets corroboration from the statement of C.W. 1 Naresh and C.W. 2 Brij Pal who were summoned by the trial court exercising its power under Section 311 of Cr.P.C.. The evidence adduced by these three witnesses is natural and trustworthy. They had no reason to falsely implicate the accused.

(9) Now the question before us is that whether the culpable homicide, which is established on record to have been committed by the accused Rishipal, amounts to commission of murder or not. On behalf of the appellant Sri Raman Kumar Sah, learned amicus curiae argued that the act alleged to have been committed by the appellant even if taken to have been proved does not amount to murder as there is neither any deadly weapon used in the crime nor there is any evidence of intention to kill on the part of the accused appellant. It is true that no arm is said to have been used in the commission of culpable homicide of Nathi Ram. We are of the view that the fact which is established from the evidence on record is that the accused riding on the back of the neck of the deceased giving blows to him while his face was downward on the sand clearly shows that the accused had the knowledge that deceased while taking breath would inhale sand with his breath into his lungs and that it could cause his death. From the post mortem examination report, it is clear that the deceased had died due to asphyxia as a result of suffocation and strangulation. Naturally, in said position, either a person would inhale the sand with the breath or

would stop taking breath if his face is downward embedded on the sand. Since accused appellant was not armed with any, deadly weapon in the crime nor had he any plan to kill him (as the prosecution story suggests that on that day it was deceased who had gone to met the accused in connection of recovery of loan), in our opinion, the act proved against the accused appellant Rishipal constitutes an offence of culpable homicide not amounting to murder punishable under Section 304 of I.P.C.. As such, we are of the view, that it cannot be said that accused Rishipal has committed murder of Nathi Ram punishable under Section 302 of I.P.C. rather its an act covered under Section 304 I.P.C.. Therefore, the conviction recorded and sentence awarded under Section 302 of I.P.C., by the trial court, cannot be maintained.

(10) For the reasons as discussed above, in our opinion, appeal deserves to be allowed partly, setting aside the conviction recorded and sentence awarded against the accused appellant Rishipal on the charge of offence punishable under Section 302 of I.P.C.. Instead, the accused appellant is liable to be convicted under Section 304 of I.P.C. as the charge proved against him is that of culpable homicide not amounting to murder. Accordingly, appeal is partly allowed. Conviction recorded and sentence awarded under Section 302 of I.P.C. by the trial court is set aside. Accused appellant Rishipal is convicted under Section 304 of I.P.C.. He is sentenced to rigorous imprisonment for a period of ten years on said charge. The period already undergone in jail by the accused appellant Rishipal during trial or during the

period of this appeal shall be adjusted from the period of ten years rigorous imprisonment directed to be served out by this Court.

(Dharam Veer, J.) (Prafulla C. Pant, J.)

Dt. 13th April, 2007
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